

REMARKS

Claim 23 is currently amended. New claims 67 and 68 are added. No new matter is added. Reconsideration of the pending claims is requested in light of the remarks below.

I: **The Rejection of Claims 1-22, 34-42 and 66 under 35 U.S.C. 102(b)**

Claims 1-22, 34-42 and 66 stand rejected under 35 U.S.C. 102(b) as being anticipated by Jayaram et al. (hereinafter referred to as "Jayaram"). Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

In this case, independent claim 1 requires a 2 μ m-family plasmid comprising a polynucleotide sequence insertion, deletion and/or substitution between a first base after a last functional codon of at least one of either an *REP2* gene or an *FLP* gene and a last base before an FRT site in an inverted repeat adjacent to said gene. Jayaram is deficient and fails to show each and every element set forth in the claim. The examiner relies upon FIG. 3 of Jayaram in making his rejection. However, FIG. 3 of Jayaram provides an incompletely annotated diagram of a yeast plasmid referring to a composite schematic of more than one plasmid. Open reading frame A is defined as FLP. None of the other open reading frames are defined. The plasmid diagram does not identify any regions of inverted repeats or of any FRT sites. Furthermore, the figure legend reference (4) (i.e. Hartley *et al.*) does not provide the identity of open reading frames B, C and D. Therefore Fig. 3 and Jayaram does not disclose "A 2 μ m-family plasmid comprising a polynucleotide sequence insertion, deletion and/or substitution between a first base after a last functional codon of at least one of either an *REP2* gene or an *FLP* gene and a last base before an FRT site in an inverted repeat adjacent to said gene".

With respect to the insertion "189" mentioned by the examiner, FIG 3 of Jayaram provides the orientation of FLP ('A'). The 5' end of FLP appears to be at the right hand side of the diagram. The 3' end of FLP appears to be at the left hand side of the diagram. "189" cannot be located between a first base after a last functional codon of an *FLP* gene and a last base before an FRT site in an inverted repeat adjacent to said gene because it is located before the first base of the FLP coding sequence. Furthermore, because FIG. 3 does not identify a *REP2* gene, FIG. 3 of Jayaram does not disclose 189 being located between a first base after a last functional codon of a *REP2* gene and a last base before an FRT site in an inverted repeat adjacent to said gene.

With respect to insertion "42" mentioned by the Examiner, FIG. 3 does not disclose the location of inverted repeats. Therefore, FIG. 3 does not disclose "42" being located between a first base after a last functional codon of an FLP gene and a last base before an FRT site in an inverted repeat adjacent to said gene.

Finally, page 7268 (left hand column, lines 24-30) of Jayaram discloses imperfect dyad symmetry of 49-bp inverted repetition separated by 22 bp. However, the exact location of this feature relative to FRT or REP2 is not disclosed. As explained above, REP2 is not disclosed at all.

Jayaram does not disclose a 2 micron family plasmid in accordance with claim 1. Jayaram is deficient as a reference and does not anticipate or make obvious claim 1. Withdrawal of the rejection is urged.

II. The Rejection of Claims 23-29 under 35 U.S.C. 112, second paragraph (indefinite)

In the Office action, claims 23-29 were rejected under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 is currently amended. Reconsideration is urged.

III. New Claims

New claims 67 and 68 are added. No new matter is added. Should any additional fees be due the USPTO is authorized to charge the deposit account of Novozymes North America, Inc. i.e., deposit account no. 50-1701.

IV. Conclusion

The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application. Should any additional fees be due the USPTO is authorized to charge the deposit account of Novozymes North America, Inc. i.e., Deposit Account No. 50-1701.

Respectfully submitted,

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